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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY:

*POL*

DEPUTY

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*Attorney for Petitioner Clarke Sheldon Lowe*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

CLARKE SHELDON LOWE,

Petitioner,

v.

JAMES E. TILTON, Secretary, California  
Department of Corrections and  
Rehabilitation,

Respondent.

Civ. No. 07CV

**07 CV 2232 LAB (CAB)**

**PETITION FOR WRIT OF  
HABEAS CORPUS UNDER  
28 U.S.C. § 2254 BY A  
PERSON IN STATE CUSTODY**

**PETITION**

This petition is in the same format and responds to all the questions contained in this Court's recommended form, dated January, 2006, located on the Court's website:

//

1. The name and location of the court which entered the judgment of conviction under attack is the Superior Court of San Diego, Central Judicial District, Department 19, 220 West Broadway, San Diego, California, 92101.

//

2. The petitioner was convicted of one count of forcible rape, rape with a foreign object, simple kidnaping, and indecent exposure on April 1, 2004. The first three convictions are under attack in this petition. The judgment of conviction was imposed on July 16, 2004, when the petitioner was sentenced prison a determinate term eight years in prison followed

1 by an indeterminate prison term of twenty-five years to life.

2 //

3 3. The case number of the judgment of conviction being challenged is SCD177421.

4 //

5 4. The sentence imposed is an eight year determinate sentence for sexual penetration  
6 by force, in violation of California Penal Code § 289(a)(1), followed by an indeterminate  
7 sentence of twenty-five years to life for forcible rape, in violation of California Penal Code  
8 §§ 261(a)(2) and 667.61(a).

9 //

10 5. The sentence commenced the day the petitioner was arrested, September 12, 2003.  
11 There is no projected release date.

12 //

13 6. The petitioner was convicted of forcible rape, in violation of California Penal Code  
14 § 261(a)(2) [count one]; convicted of forcible sexual penetration, violation of California  
15 Penal Code § 289(a)(1) [count two]; acquitted of kidnaping for rape, in violation of  
16 California Penal Code § 209(b)(1) and convicted of the lesser-included offense of kidnaping,  
17 in violation to California Penal Code § 207 [count three]; and convicted of indecent  
18 exposure, in violation of California Penal Code § 314.1 [count four]. The jury also made  
19 true findings on count one, (1) that the movement of the victim substantially increased the  
20 risk of harm to her, over and above the risk necessarily inherent in the underlying offense,  
21 in violation of California Penal Code § 667.61(d)(2); and (2) that the petitioner kidnaped the  
22 victim in violation of California Penal Code § 207, within the meaning of California Penal  
23 Code § 667.61(b)(c), and (e). The eight year upper term sentence for kidnaping was stayed  
24 pursuant to California Penal Code § 654.

25 //

26 7. The petitioner pled not guilty to all counts of conviction.

27 //

28 8. The petitioner was convicted after a jury trial.

1 9. The petitioner did not testify at trial.

2 //

3 **DIRECT APPEAL**

4 10. The judgment and conviction were appealed to the California Court of Appeal,  
5 Fourth Appellate District, Division One.

6 //

7 11. The convictions and sentences were affirmed by that Court in case number  
8 D044761, in an unpublished decision, on May 25, 2005, by Justices Aaron, McConnell, and  
9 Nares. The petitioner raised the following five issues on direct appeal:

10 a. the trial court erred in refusing to sever counts one through three  
11 from count four;

12 b. the trial court erred in admitting evidence of a prior sexual offenses  
13 under California Evidence Code §§ 1101(b) and 1108;

14 c. the trial court erred in admitting testimony concerning statements  
15 the petitioner made when stopped on September 4, 2003;

16 d. the trial court erred in refusing a lesser included offense instruction  
17 concerning the kidnaping enhancement under California Penal Code §  
18 667.61(d), and its instructions on that enhancement were incorrect and  
19 confusing, and

20 e. the upper term consecutive sentence of eight years on count two  
21 violated *Blakely v. Washington*, 542 U.S. 296 (2004).

22 //

23 12. On August 24, 2005, the California Supreme Court denied the Petition for  
24 Review in case number S135191 from the affirmance by the California Court of Appeal in  
25 case number D044761. The petitioner raised the same five issues he raised on direct appeal.

26 //

27 13. The petitioner did not file a Petition for Writ of Certiorari to the United States  
28 Supreme Court.

1 **COLLATERAL REVIEW IN STATE COURT**

2 //

3 14. The petitioner filed a petition for writ of habeas corpus in the Superior Court of  
4 San Diego County.

5 //

6 15. The case number was HC18701, filed on November 9, 2006. It raised the  
7 following claim:

8 a. Ineffective assistance of trial counsel arising from the failure of trial  
9 counsel (1) to object that the imposition of a sentence of twenty-five years to  
10 life on count one, pursuant to California Penal Code § 667.61(a), was  
11 precluded by the jury verdict of not guilty on count three, kidnaping for rape,  
12 and (2) to move to suppress DNA samples taken from the petitioner as a result  
13 of a stop on September 4, 2003.

14 That petition was denied without an evidentiary hearing on January 4, 2007. The  
15 Superior Court rejected the claim the petitioner was denied effective assistance of trial  
16 counsel because (1) he suffered no prejudice from trial counsel's failure to challenge the use  
17 of "substantial increase in risk" as a sentencing enhancement because it found the finding of  
18 not guilty of the offense of kidnaping for rape "does not preclude the respective  
19 enhancements for different offenses for which the enhancement was also available," and (2)  
20 the petitioner had failed to state a *prima facie* case that he arrest was without probable cause  
21 and therefore an illegal investigatory detention.

22 //

23 16. The Petitioner filed a petition for writ of habeas corpus before the California  
24 Court of Appeal, Fourth Appellate District, Division One, on April 4, 2007, in case number  
25 D050608.

26 //

27 17. That petition raised the same claim as that in HC 18701, as well as an additional  
28 claim arising from the intervening decision of the United States Supreme Court in

1 *Cunningham v. California*, \_\_\_U.S.\_\_\_, 127 S.Ct. 856 (2007). That additional claim was  
2 that the trial court had erred in imposing an upper term consecutive sentence of eight years  
3 for forcible sexual penetration, in violation of California Penal Code § 289(a)(1) [count two],  
4 based upon facts not found by a jury. The Court of Appeal addressed the claims on the  
5 merits and denied the petition on August 22, 2007, without an evidentiary hearing. It denied  
6 the petition because it found the petitioner had failed to state a *prima facie* case for relief on  
7 any of the claims under *People v. Duvall*, 9 Cal.4th 464, 474-475 (1995). Specifically, it  
8 found the petitioner conceded that under California law, in light of the California Supreme  
9 Court's recent decision in *People v. Black*, 41 Cal.4th 799 (2007), that he was not entitled  
10 to relief from the imposition of consecutive sentences based upon facts not found by the jury.  
11 The California Court of Appeal also found the petitioner had failed to make a *prima facie*  
12 case on the claim of ineffective assistance because (1) he failed to show prejudice arising  
13 from the failure of trial counsel to object on the basis of double jeopardy to the use of the  
14 finding of "substantial increase in the risk of harm" resulting from the movement of the  
15 victim as an aggravating factor to impose a sentence of twenty-five years to life under  
16 California Penal Code § 667.61(a), and (2) even though DNA evidence was seized from the  
17 petitioner as a result of an arrest for which there was no probable cause, the Court of Appeal  
18 found there could have been evidence to support consent to the seizure of DNA and the  
19 possibility that a later legal arrest of the petitioner would have rendered the seizure of DNA  
20 evidence inevitable.

21 //

22 18. Petitioner filed a Petition for Review with the California Supreme Court on  
23 August 31, 2007, in case number S155949.

24 //

25 19. The petitioner raised the same grounds in that petition as before the California  
26 Court of Appeal for the Fourth Appellate District, Division One, in case number D050608.  
27 That petition was denied without comment on November 14, 2007.

28 //

1 20. Not applicable (a Petition for Habeas Corpus was filed in the California Supreme  
2 Court).

3 //

4 21. This is the first federal petition for writ of habeas corpus challenging the  
5 petitioner's convictions in Superior Court case number SCN177421.

6 //

## 7 **22. GROUNDS FOR RELIEF**

### 8 **A. Ground one: ineffective assistance of trial counsel**

9 Petitioner's convictions and sentences for rape, kidnaping, and forcible sexual  
10 penetration are unlawful because he was denied effective assistance of trial counsel, as  
11 guaranteed by the Sixth and Fourteenth Amendments to the United States constitution, and  
12 as interpreted by United States Supreme Court in *Strickland v. Washington*, 466 U.S. 688  
13 (1984).

#### 14 **Supporting facts:**

15 **a. Failure to object that use of "kidnaping" enhancement at**  
16 **sentencing, where the jury had acquitted the petitioner of**  
**kidnaping for rape at trial, violated double jeopardy.**

17 The petitioner was charged in count three with the offense of kidnaping for rape of  
18 Kyle S., in violation of California Penal Code § 209. The jury acquitted him of that offense  
19 and instead found him guilty of the lesser-included offense of simple kidnaping under  
20 California Penal Code § 207 [Petitioner's Exhibit B-4, p. 9]. One of the elements of  
21 California Penal Code § 209, as stated in section 209(b)(2), is that the offense requires a  
22 finding that "the movement [of the victim] is not merely incidental to the commission of the  
23 rape and where the movement increases the risk of harm to the person moved over and above  
24 that necessarily present in the crime of rape itself." The jury also made true findings on  
25 counts one and two, that (1) the petitioner kidnaped Kyle S, and the movement of her  
26 substantially increased the risk of harm, over and above the level of risk necessarily inherent  
27 in the underlying offense, in violation of California Penal Code § 667.61(d)(2), and (2) she  
28 had been kidnaped in violation of California Penal Code § 207, within the meaning of

1 California Penal Code § 667.61(b), (c), and (e).

2 The trial court used the finding that the movement of Kyle S. had substantially  
3 increased the risk of harm, over and above the level of risk necessarily inherent in the  
4 underlying offense, to impose a sentence of twenty-five years to life under California Penal  
5 Code § 667.61(a), rather than a sentence of fifteen years to life under California Penal Code  
6 § 667.61(b). Trial counsel failed to object that under the collateral estoppel doctrine of the  
7 double jeopardy clause of the Fifth Amendment to the United States Constitution, as  
8 interpreted by the United States Supreme Court in *Ashe v. Swenson*, 397 U.S. 436 (1970),  
9 the finding of not guilty on count three, kidnaping for rape, precluded the use of the finding  
10 of "substantial risk" to increase the petitioner's sentence from fifteen years to life, as  
11 required by California Penal Code § 667.61(b), to twenty-five years to life, as required by  
12 California Penal Code § 667.61(a).

13 //

14 **b. Failure to move to suppress seizure of DNA from stop of  
September 4, 2003**

15 At trial, San Diego Police officer Jaime Conti testified he assisted Jana Beard, a sex  
16 crimes Detective with the San Diego Police Department, and another San Diego police  
17 officer in the stop of the petitioner in his car in Pacific Beach on September 4, 2003. During  
18 that stop, Conti took mouth swabs from the petitioner for DNA. These were later analyzed  
19 and compared with semen stains found on Kyle S.'s shorts and found to match the  
20 petitioner's DNA. During the trial, the petitioner moved to exclude statements made to  
21 Detective Beard during that stop on the basis that the petitioner was in custody and not given  
22 *Miranda* warnings, and that the statements had taken in violation of the Fourth Amendment.  
23 The petitioner's trial counsel also argued the stop of the petitioner on September 4, 2003,  
24 was without probable cause, as seen by the decision of the police to release him after he had  
25 been held for over half an hour. The trial court denied the motion to suppress statements  
26 taken on September 4, 2003, finding the petitioner was not in custody on September 4,  
27 2003, and therefore *Miranda* warnings were not required. The failure of trial counsel to  
28 move to suppress the DNA evidence seized during this arrest on the basis of lack of probable



1 cause prevented the petitioner from suppressing the DNA evidence that directly linked him  
2 to the most serious offenses charged in counts one and two. The California Court of Appeal  
3 found that the stop was without probable cause, but found no ineffective of trial counsel  
4 because there could have been evidence to support consent to the seizure of DNA and the  
5 possibility that a later legal arrest of the petitioner would have rendered the seizure of DNA  
6 evidence inevitable.

7 //

8 **B. Ground Two: Imposition of consecutive upper term sentence based  
upon factors not found by the jury**

9 The petitioner was denied his right under the Sixth and Fourteenth Amendments to  
10 the United States Constitution, as interpreted by the United States Supreme Court in *Blakely*  
11 *v. Washington*, 542 U.S. 296 (2004), and *Cunningham v. California*, \_\_\_ U.S. \_\_\_, 127 S.Ct.  
12 858 (2007), to have a jury find all facts used to increase the statutory maximum sentence,  
13 because the trial court imposed consecutive sentences based upon facts not found by the jury.

14 **Supporting facts**

15 The jury found the petitioner guilty of rape, rape by a foreign object, and indecent  
16 exposure. It also made true findings that the petitioner kidnaped Kyle S., over and above the  
17 level of risk necessarily inherent in the underlying offense, and that he kidnaped her within  
18 the meaning of California Penal Code § 207. Based upon the true finding of kidnaping, the  
19 trial court imposed an indeterminate sentence of twenty-five to years to life on count one  
20 pursuant to California Penal Code § 667.61(a), followed by a determinate sentence of eight  
21 years in prison on count two. The petitioner specifically objected that the imposition of a  
22 full upper term consecutive sentence for count two violated *Blakely v. Washington*, 542 U.S.  
23 296 (2004), which had recently been decided. The trial court overruled the objection and  
24 imposed a full upper term consecutive sentence on count two, finding no circumstances in  
25 mitigation and finding several factors in aggravation under the California Rules of Court,  
26 specifically: (1) vulnerable victim (California Rules of Court, Rule 4.421(a)(3)); (2) the  
27 imposition of a concurrent term for count four, indecent exposure (California Rules of Court,  
28 Rule 4.421(a)(7)); (3) the manner of the crime showed planning and sophistication



1 (California Rules of Court, Rule 4.421(a)(8)); (4) the petitioner took advantage of a position  
2 of trust or confidence (California Rules of Court, Rule 4.421(a)(11)); (5) the petitioner  
3 engaged in violent conduct (California Rules of Court, Rule 4.421(b)(1)); (6) the petitioner  
4 had prior convictions of increasing seriousness (California Rules of Court, Rule 4.421(b)(3));  
5 (7) the petitioner was on probation at the time the offense was committed (California Rules  
6 of Court, Rule 4.421(b)(4)); and (8) his performance while on probation was unsatisfactory  
7 (California Rules of Court, Rule 4.421(b)(5)).

8 //

9 **C. Ground Three: Admission of statement in violation of *Miranda v. Arizona***

10 The admission of the petitioner's post-arrest statement on September 4, 2003, violated  
11 the Fifth and Fourteenth Amendments, as interpreted by the United States Supreme Court  
12 in *Miranda v. Arizona*, 384 U.S. 436 (1966); and *Dickerson v. United States*, 530 U.S. 428,  
13 440 (2000). Contrary to the decision of the California Court of Appeal, the admission was  
14 not harmless, because it has a prejudicial and injurious effect or influence upon the jury's  
15 decision, the standard for prejudice under *Brecht v. Abrahamson*, 507 U.S. 169, 637 (1993).

16 **Supporting facts**

17 The petitioner was stopped while driving at approximately 1:30 a.m. on September  
18 4, 2003, for a traffic violation. Detective Jana Beard, after being paged by the arresting  
19 officers, arrived at the scene of the traffic stop and encountered the petitioner while he was  
20 standing on the sidewalk by himself. Several police officers were standing about 15-25 feet  
21 away from him, near his car. At some point later, Officer James Conti arrived. Beard  
22 introduced herself to the petitioner and informed him that she was investigating several  
23 sexual assault cases that had occurred in the area, and that she was going to have his car  
24 impounded. Once Beard told the petitioner his car would be impounded, he became visibly  
25 agitated. He clenched his fists and told Beard that she could not take his car because he  
26 needed it. Beard told the petitioner his car matched the description of a car involved in  
27 several sexual assault cases in the area.

28 Beard questioned the petitioner and asked him if he had a girlfriend in the area. He

1 responded that he had an ex-girlfriend. Beard asked him when the last time was that he had  
2 been intimate with a woman. The petitioner responded by asking Beard what she was  
3 accusing him of and told her that she had "had better have [her] act together on this." The  
4 petitioner said that he had not had sex in three months. He asked Beard whether she was  
5 calling him a rapist. Beard stated that she had not used that word, and that she was not  
6 accusing him of any such thing. Beard also asked Lowe if he ever masturbated in his car.  
7 Lowe responded, "Is that what this is all about?"

8 During the questioning, Beard was not wearing a police uniform. She had a gun,  
9 which she did not display. Beard testified that she never told the petitioner that he was free  
10 to leave at any point during the questioning. She also testified that the petitioner was in fact  
11 free to leave, but that he did not do so. The petitioner was not restrained in any way during  
12 the interrogation. Beard estimated that the questioning lasted 10 to 15 minutes and said that  
13 the petitioner did not request that the conversation end at any point. Beard could not recall  
14 whether she left the scene before or after the petitioner did, but she did recall that he was  
15 offered a ride home. Beard testified that the impound report indicated that Lowe's car was  
16 impounded at 3:10 that morning.

17 The California Court of Appeal found that the trial court erred in failing to suppress  
18 the statement, because the petitioner reasonably believed he was in custody and *Miranda*  
19 warnings should have been given. It found the error harmless beyond a reasonable doubt.

20 //

21 23. No other petition or appeal from the petitioner's convictions and sentence in  
22 SCD177421 is pending in any state or federal court.

23 //

24 24. The attorneys who represented petitioner at the following stages were:

25 (a) Preliminary Hearing: Terry Zimmerman, Office of the Public  
26 Defender, 233 A Street, San Diego, CA 92101, as appointed counsel;

27 //

28 (b) Arraignment or plea: same as above;

1 (c) Jury trial: same as above;

2 //

3 (d) Sentencing: same as above;

4 //

5 (e) On direct appeal to the California Court of Appeal and the  
6 California Supreme Court, the petitioner was represented by Patrick J,  
7 Hennessey, Jr., 2356 Moore Street, Suite 201, San Diego, CA 92110, as  
8 appointed counsel;

9 //

10 (f) The petitioner filed two original petitions for writ of habeas corpus  
11 before the Superior Court of San Diego County in case number HC18701, and  
12 the California Court of Appeal in case number D050608. He filed a Petition  
13 for Review case number S155949 before the California Supreme Court from  
14 the denial of the habeas corpus petition in case number D050608. Counsel in  
15 all three petitions was John Lanahan, 550 West C Street, Suite 1670, San  
16 Diego, California 92101-8557.

17 //

18 26. The petitioner was sentenced on two counts of the information, for forcible rape,  
19 kidnaping and forcible sexual penetration; the sentence for kidnaping was stayed.

20 //

21 27. There is no future sentence the petitioner must serve in addition to the sentence  
22 imposed in SCD 177421.

23 //

24 28. The petitioner does NOT consent to having all proceedings decided by the  
25 magistrate judge.

26 //

27 29. This petition was filed on November 21, 2007.

28 //

1           Wherefore, Petitioner prays that the Court grant Petitioner relief to which he may be  
2 entitled in this proceeding.

3  
4 I declare under penalty of perjury that the foregoing is true and correct. Executed on  
5

6 \_\_\_\_\_  
7 CLARKE SHELDON LOWE, Petitioner

8 DATED: November 21, 2007

Respectfully submitted,

9  
10   
11 John Lanahan,  
12 CA Bar Number 133091  
13 550 West C Street, Suite 1670  
14 San Diego, CA 92101-8557  
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*Attorney for Petitioner*

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

CLARKE SHELDON LOWE,	) Civil No. 06cv
	)
Petitioner,	) <b>PROOF OF SERVICE</b>
	)
v.	)
	)
JAMES E. TILTON, Jr., Secretary, California,	)
California Department of Corrections	)
And Rehabilitation,	)
	)
Respondent.	)
_____	)

I, the undersigned, say:

1) That I am over eighteen years of age, a resident of the County of San Diego, State of California, and not a party in the within action;

2) That my business address is 550 West C Street, Suite 1670, San Diego, California, 92101-8557;

3) That I served the within PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2254 BY A PERSON IN STATE CUSTODY to be delivered an original and one copy thereof to the Office of the Clerk, 880 Front Street, San Diego, California, 92101;

4) That I mailed a copy to the Additional Respondent, Edmund G. Brown, Attorney General of the State of California, P.O. Box 85266, San Diego, CA 92186-5266;

5) At the petitioner's request, I caused an additional copy be delivered to his mother;

I certify under penalty of perjury that the foregoing is true and correct. Executed on November 21, 2007, at San Diego, California.

  
\_\_\_\_\_  
JOHN LANAHAN

JS 44 (Rev. 11/04)

## CIVIL COVER SHEET

07 CV 2232 LAB (CAB)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

CLARK SHROON LOWE

## (b) County of Residence of First Listed Plaintiff

SAN DIEGO

(EXCEPT IN U.S. PLAINTIFF CASES)

## (c) Attorney's (Firm Name, Address, and Telephone Number)

DOHN LANAHAN 550 WEST C STREET  
SAN DIEGO, CA 92101 (619) 237-5498

## DEFENDANTS

JAMES E. TILKIN

## County of Residence of First Listed Defendant

SACRAMENTO

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

## Attorneys (If Known)

EDMUND G. BROWN, JR.  
ATTORNEY GENERAL, CALIFORNIA  
P.O. BOX 52186-5266, SAN DIEGO, CA

## II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff

☒ 3 Federal Question  
(U.S. Government Not a Party)

☐ 2 U.S. Government Defendant

☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

## IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input checked="" type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN

(Place an "X" in One Box Only)

☒ Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

HABEAS CORPUS PETITION BY STATE PRISONER

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

11/21/07

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

See 11/21/07

**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

**# 144762 - SH**

**November 21, 2007  
15:45:06**

**Habeas Corpus  
07-02232**

Judge.: M. JAMES LORENZ

Amount.:

\$5.00 CK

Check#: BC3592

**Total-> \$5.00**

FROM: LOWE V TILTON